

Child Soldiers and the Capacity of the Optional Protocol to Protect Children in Conflict

by Shara Abraham*

In recent years a body of international norms and standards for protecting children affected by armed conflict has emerged. Of particular importance is the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol), which entered into force on February 12, 2002. The Optional Protocol sets 18 as the minimum age for compulsory military recruitment. It also requires that states mandate a minimum age, never less than 15, at which they will accept voluntary military recruits.

Although the enactment of the Optional Protocol is a laudable achievement, it is abundantly clear that child soldiers continue to be employed at increasingly alarming rates. One statistic illustrates the depth to which armed conflict continues to deleteriously affect children: more than 300,000 children under 18 are engaged in conflict, serving as combatants in nearly 75 percent of the conflicts around the globe. While protracted conflicts ensue from Asia to South America, potential conflicts loom on the horizon as well. Such conflicts test the capacity of the Optional Protocol to protect children in conflict and serve as reminders that the enactment of international instruments alone has not stopped the aggressive mobilization of the world's youngest and most vulnerable population.

The most effective means of ending this offensive practice is a multi-faceted approach. Governments, international agencies, and local actors must continue to pressure armed forces to stop recruiting and deploying child soldiers. Human Rights Watch recently noted that several armed opposition groups in Burma appear to be responding to such pressure. It also is important to curb the easy availability of small arms and military aid, both of which facilitate the use of child soldiers. Additionally, it is critical to reduce the risk of child recruitment. Governments should regularize recruitment procedures and prosecute those who violate rules precluding underage recruitment. Educating parents and local communities about national and international law strengthens their capacity for advocacy, protection, and monitoring, thus potentially minimizing the risk of recruitment. Further, child soldiers often are products of impoverished and desperate socio-political environments. Addressing these root causes is another key component of reducing the risk of recruitment.

Additionally, demobilization and rehabilitation programming is important. The establishment of peace creates an opportunity for war-torn states to begin directing energy and resources toward the victims of conflict. Peace agreements thus ought to include specific measures pertaining to the demobilization and reintegration of children, including the creation of jobs for youth and rebuilding schools and local communities. As the tenuous peace in post-conflict Sierra Leone demonstrates, developing a protective environment for demobilized child soldiers and laying the groundwork for reunification is important. Absent meaningful and effective implementation of disarmament, demobilization, and reintegration programming, post-conflict situations could once again degenerate into conflict.



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Drawing by a former child soldier in Sierra Leone.

From Impressionable Youth to Ruthless Killer: The Phenomenon of the Child Soldier

Across each continent countless states are submerged in conflict. In armed conflicts from Sierra Leone to Burma to Colombia, fighting between government forces and non-state armed groups has led to the destruction of entire communities. Murder, rape, and torture of the local population are the predominant tactics that government and opposition groups employ to strike terror and maintain power. The aggressive recruitment of child soldiers enables such campaigns of terror around the world. Government and rebel forces abduct and forcibly conscript children, violently quashing their innocence and transforming them into fighters and sex slaves.

Abducted and forcibly recruited by armed forces, children in armed conflicts suffer two-fold as both witnesses to atrocities and perpetrators of unspeakable crimes. Many child soldiers fight on the front lines; others are used as spies, messengers, and servants. For young girls, recruitment leads to particularly atrocious suffering. Young girls often are employed as sexual slaves and are subject to rape, sexual abuse, and sexual harassment.

Child soldiers are appealing to armed forces for various reasons, including the fact that children are easy to arm and control. Children are easy to manipulate because they are

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obedient and unlikely to question orders. As the Coalition to Stop the Use of Child Soldiers notes, governments and armed groups use children because they are “easier to condition into fearless killing and unthinking obedience.” Armed forces consider children to be useful soldiers because of the ability to arm children with newly developed lightweight and easy to fire weapons. Also, armed forces frequently assign children to a fatally dangerous task because of their size and agility: the laying and clearing of landmines.

Armed forces employ countless tactics to turn young children into murderers. Drugs and alcohol are forced upon children to dull their sensitivity to pain. In all too many conflicts, sheer terror and a desperate struggle to survive lead children to war. This practice of brutalizing children and transforming them into hardened killers creates a moral and political dilemma for states in conflict with regimes that employ child soldiers. Conflict with such regimes requires a state to simultaneously condemn the use of child soldiers as a violation of international law, yet remain aware of the threat they pose.

International Legal Mechanisms

International Labor Organization Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was adopted in June 1999 and was the first international legal instrument to legally recognize child soldiering as a form of labor. In fact, the convention deems child soldiering to be one of the worst forms of child labor. Article 3(a) specifically states that the worst forms of child labor include “all forms of slavery or practices similar to slavery, such as . . . forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.” Convention 182 is also the first international treaty to set 18 as the minimum age for military participation.

Convention 182 precipitated the development of a body of international norms and standards for protecting children affected by armed conflict. As Secretary-General Kofi Annan noted during a recent Security Council meeting on children and armed conflict, on January 23, 2003, there is growing evidence of an increased international commitment to the protection of children and child soldiers. Secretary-General Annan emphasized the importance of two landmark instruments — the Rome Statute of the International Criminal Court (Rome Statute) and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts — both of which entered into force this past year and significantly strengthen existing protections for children in armed conflict.

The Rome Statute defines the use of child soldiers under 15 as a war crime. Consistent with this definition, the International Criminal Court has jurisdiction over the war crime of conscripting or enlisting children under 15 into national armed forces or armed groups and of using children as active participants in hostilities. Additionally, the Rome Statute contains an expansive definition of “participation in hostilities.” The statute explains that “use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology.”

The Optional Protocol, which has been signed by over 100 countries and ratified by more than 40, presents perhaps the most useful tool for combating the employment of chil-

dren in warfare. This landmark instrument represents universal opposition to the harmful impact of armed conflict on children. The underlying Convention on the Rights of the Child (Convention) generally defines a child as any person under the age of 18, yet sets 15 as the minimum age for military recruitment and participation in armed conflict. The Optional Protocol amends the Convention by making 18 the minimum age for conscription. This change is significant because it marks a shift in international opinion regarding the age at which it is acceptable to conscript children.

The first three articles concern direct participation in hostilities, compulsory recruitment, and voluntary recruitment, respectively. Article 1 stipulates that states parties “shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.” Article 2 requires states parties to ensure that persons who are under 18 are not compulsorily recruited into the armed forces. Article 3 has been lauded as a particularly significant achievement. This provision that states parties raise the minimum age for the voluntary recruitment of persons into their armed forces from that set out in the Convention. The second paragraph of this article authorizes states parties to determine the minimum age at which it will permit voluntary recruitment into its armed forces. Where a state party permits voluntary recruitment under the age of 18, states must comply with the following minimum safeguards as set forth in Article 3, paragraph 3(a): (1) recruitment must be genuinely voluntary; (2) recruitment must be conducted with the informed consent of the person’s parents or legal guardians; (3) recruits must be fully informed of military duties; and (4) recruits must provide reliable proof of age prior to acceptance into national military service.

The fourth and fifth articles of the Optional Protocol pertain to non-state armed groups and establish a framework for holding non-state armed groups accountable for child soldiering. Article 4 explicitly states that “armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.” The Optional Protocol further provides that application of its principles is not contingent on the existence of an armed conflict, rendering questions as to whether a situation amounts to an armed conflict irrelevant. Perhaps most importantly, the Optional Protocol requires all states parties to endeavor to prevent the recruitment and use of children under 18, rather than limiting this obligation to parties involved in a particular conflict.

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The Optional Protocol also addresses post-conflict issues, including demobilization of child soldiers. Article 6 provides that persons “recruited or used in hostilities” are to be demobilized and accorded “all appropriate assistance for their physical and psychological recovery and their social reintegration.” Notably, the language makes clear that children voluntarily or forcibly recruited into armed groups, as well as non-state forces, are to be included in demobilization and reintegration efforts.

Assessing the Optional Protocol

During the Optional Protocol’s brief existence it has been both lauded and criticized. As Casey Kelson, coordinator of the Coalition to Stop the Use of Child Soldiers, recently remarked, “This first anniversary of the Optional Protocol should not be a celebration but a time to call upon other countries to join the international community in condemning this appalling practice.”

In an article entitled, “Children in Conflict: Assessing the Optional Protocol,” Center for Defense Information senior analyst Rachel Stohl articulated five strengths of the Optional Protocol: (1) it establishes an international standard for the employment of children in conflict; (2) it codifies a legal norm by which states can be held accountable; (3) it sets a minimum age requirement that makes it more difficult for governments and non-state actors to fabricate the ages of children employed in armed conflict; (4) it encourages states to implement existing national laws and policies or enact domestic standards that will reflect the standards enunciated in the statute; and (5) it raises public awareness regarding the use of child soldiers.

The Optional Protocol is not, however, flawless. As Stohl concedes, “The Optional Protocol is a compromise.” In particular, its effectiveness suffers from vagueness. For instance, Article 1 stipulates that states “shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.” The deliberate vagueness of this provision enables states to determine what constitutes “all feasible measures” and define “direct part in hostilities.” By setting the standards by which they are judged, states may easily escape the scrutiny of the international community. The Optional Protocol also breaks with standard international norms concerning protocols. Generally, a country is prohibited from becoming a party to a protocol unless it ratifies the parent agreement. The Optional Protocol permits states that have not ratified the Convention, such as the United States, to ratify the Optional Protocol, in turn undermining the spirit of the Convention. Although much can be gained by allowing states to commit themselves to the Optional Protocol even where such states are unwilling to accept all of the terms of the Convention, some argue this loophole effectively diminishes the significance of the Convention.

Further, the Optional Protocol is not comprehensive in its approach to tackling the employment of young children in armed conflict. For example, the Optional Protocol fails to adequately address the issue of voluntary recruitment of chil-

dren under 18. Additionally, the Optional Protocol fails to delineate a means for encouraging adherence on the part of non-state groups. Non-state groups did not participate in crafting the content of the statute, potentially rendering it difficult to persuade their adherence. Finally, there is a glaring absence of monitoring, verification, and enforcement provisions. The absence of such critical components inevitably will hinder the Optional Protocol’s implementation.

The United States Congress has conducted its own preliminary assessment of the Optional Protocol. The Congressional Human Rights Caucus of the United States Senate recently sponsored a briefing on child soldiers. The purpose of the briefing was to highlight the continuing plight of children in armed conflict and address implementation and enforcement of the Optional Protocol. The briefing focused on countries that have been submerged in conflict for years, in some instances even decades, highlighting Burma, Cambodia, and Uganda as the most egregious cases of the use of child soldiers. As the various speakers at the briefing demonstrated, the pervasive use of child soldiers continues unabated in spite of the ratification of the Optional Protocol and increasingly unified international opposition.

The Role of the Optional Protocol in Protracted Conflicts: Burma

To assess the potential effectiveness of the Optional Protocol, it is useful to consider it in the context of protracted conflicts, such as the internal conflict in Burma. Protracted

conflicts like Burma underscore the shortcomings of the Optional Protocol. The State Peace and Development Council (SPDC), Burma’s military government, crushed pro-democracy demonstrations in 1988. Following this victory over democracy, the military government immediately directed energy toward building its armed forces, capitalizing on the nation’s youth. In many instances, young boys are forced to choose between imprisonment and military service. Some children even

voluntarily join opposition groups in hopes of avenging past abuses by the Burmese army.

With more than 70,000 boys serving in Tatmadaw Kyi, the government’s army, Burma is estimated to have the largest number of child soldiers in the world. Armed opposition groups in Burma also recruit child soldiers. The United Wa State Army, the largest armed opposition group, utilizes approximately 2,000 child soldiers.

Burma’s use of child soldiers is characterized by excessive brutalization. Should a child be brave enough to refuse enlistment, that child likely is sent to a local army base or recruitment camp and beaten into submission. Following recruitment, Burmese child soldiers, some as young as 11, are subject to beatings during training, forced to commit human rights abuses against civilians, and prohibited from contacting their families. Further, children face severe reprisals if they attempt escape.

A primary source of recruits is the Ye Nyunt system, or “Brave Scouts.” Boys as young as seven engage in military training at the Ye Nyunt camps and are later transferred to Su Saun Yay recruit holding camps. All recruits entering the government army first endure brutalization and isolation in the

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Su Saun Yay camps. Young recruits performing training exercises are routinely beaten, sometimes to the point of unconsciousness. The brutalization continues at one of twenty formal military training camps. As with initial recruitment, escape is severely punished. The most common punishment entails forcing the entire group of trainees, often numbering more than two hundred, to line up and beat the escapee. The brutalization continues even after deployment as these Burmese child soldiers are forced to carry out brutal acts. Although some opposition groups have begun to respond to international pressure by reducing the recruitment and deployment of child soldiers, the SPDC and the United Wa State Army continue to ignore such pressure. In fact, the SPDC adamantly denies that it has even recruited and deployed children.

Burma's use of child soldiers violates its domestic law as well as its commitments under the Convention, which Burma ratified in August 1991. Notably, Burma has not ratified the Optional Protocol. Even if Burma were to ratify the Optional Protocol, its effectiveness is dubious. Among the flaws Rachel Stohl highlighted, the Optional Protocol fails to adequately address voluntary recruitment of children 18 and under. Thus, the Optional Protocol would be powerless with respect to the scores of children that voluntarily join the Burmese government army or non-state armed groups. Additionally, the dearth of monitoring, verification, and implementation provisions impedes the Optional Protocol's potential effectiveness, particularly in a situation such as that in Burma where the key players consistently refute their utilization of child soldiers.

The Role of the Optional Protocol in New Conflicts: Iraq

The Optional Protocol may potentially play a role in the protection of children before conflict emerges as illustrated by the war in Iraq. International attention focuses almost exclusively on Saddam Hussein's development of weapons of mass destruction. With international scrutiny centered on the threat of chemical and biological weapons, Saddam Hussein's regime deliberately recruits children into its armed forces with impunity. With the onset of the war with Iraq, the international community must address the ineluctable fact that war will almost certainly entail combat with children. The Iran-Iraq War and the Gulf War are instructive because reports suggest that children fought among Iraqi forces during both conflicts.

The Iraqi regime has been training children as young as ten years old since the mid-1990s. Peter Singer, an analyst with the Brookings Institution, recently reported that Baghdad is home to nearly 8,000 child soldiers. As Singer explains, "A common means for totalitarian regimes to maintain control is to set their country on a constant war footing and militarize society." Recruiting and training children, and perhaps most importantly, indoctrinating their impressionable minds with extremist ideology, enables Saddam Hussein to consolidate his hold over the Iraqi people. These were the tactics Nazi Germany employed to a frighteningly effective degree. Comparing Iraqi child soldiers with Hitler Youth, Singer noted that Iraqi child soldiers could similarly "operate with unexpected and terrifying audacity."

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National law and policies perpetuate the mobilization of Iraq's children. Article 1 of the Iraqi Constitution states that "[t]he defence of the homeland is a sacred duty and honour for citizens." The 1969 Military Service Act sets the minimum age for compulsory recruitment at eighteen. It is unclear what the minimum age for voluntary recruitment is; sources such as the Center for Defense Information indicate it may be as young as fifteen. In fact, the Revolutionary Command Council is authorized to determine whom it may conscript during wartime.

Supplementing national law and policies that permit traditional recruiting and conscription, military training schools and military youth organizations are predominantly responsible for the mobilization of Iraq's children. A host of military training programs and youth organizations were launched following the Gulf War. For instance, in 1998 the Iraqi government initiated a military-preparedness project designed

to equip all Iraqi citizens between the ages of 15 and 65 with basic self-defense and small arms training. The government also developed military training camps for children between 12 and 17. These military camps have trained more than 23,000 children in the usage of light arms and Ba'ath ideology, which espouses pan-Arabism, socialism, and resistance to foreign interference. Political scientists have even likened Ba'ath ideology

to European fascism. Additionally, numerous military youth groups are employed to train Iraq's youth. The Ashbal Saddam, or Saddam Lion Cubs, with members as young as ten, is but one organization whose training includes the use of small arms, hand-to-hand combat, and infantry tactics. The U.S. State Department's Human Rights Report on Iraq notes that families who do not enroll their children in these programs face sanctions, such as the loss of their food ration cards. Because sanctions are imposed for failure to enroll, enrollment is not functionally voluntary. The report also noted that the failure to register children in the Fedyayeen Saddam, or Saddam's Martyrs, generally results in the denial of school examination results. The Fedyayeen Saddam reportedly is comprised entirely of children, numbering between 18,000 and 40,000 troops.

The near certainty that Saddam Hussein will deploy children makes it incumbent upon the international community to address the use of child soldiers. Presented with this disturbing reality, the shortcomings of international instruments such as the Optional Protocol are evident. Iraq has neither signed the instrument nor taken any steps toward preventing the use of children in armed combat or limiting their participation in military training programs. In fact, it is conceivable that Iraq's utilization of child soldiers will only increase as the war unfolds. Yet as reported in the *Independent*, among other sources, it appears the Pentagon has not explicitly prepared for facing child soldiers in combat. Given the psychological trauma that accompanies military combat with children, as well as the public relations debacle that inevitably will ensue, it is shocking that American forces did not address the issue before troops were deployed. Lacking such preparedness, the United States will find itself in a precarious position: the United States must condemn the use of child soldiers as a violation of international law yet remain vigilant against the threat they pose.

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As war with Iraq demonstrates, the usefulness of the Optional Protocol is undermined when rogue states are at issue. Iraqi law and policies controvert the standards enumerated in the Optional Protocol and conflict with a developing international consensus opposed to the recruitment and deployment of children under 18. Because Iraq is not obligated to abide by the Optional Protocol, a concerted campaign of international pressure may, therefore, be the most effective tool for protecting Iraqi children.

Conclusion

The development of international norms and standards concerning the involvement of children in armed conflict is significant. In particular, the widespread acceptance of the Optional Protocol is cause for optimism. Precarious peace processes, protracted conflicts, and the threat of new conflicts nonetheless demand a vigilant and concerted commitment from the international community. Such conflicts also illustrate the shortcomings of the Optional Protocol. Buttressed by mechanisms for implementing, reporting, and monitoring, as well as a more explicit declaration concerning voluntary recruitment, the Optional Protocol could be employed more effectively to protect children affected by armed conflict. International condemnation of the use of child soldiers warrants a strengthened Optional Protocol with a capacity for comprehensive protection of children from conflict. Yet given the Optional Protocol's limitations, ending the deplorable practice of child soldiers requires a multi-faceted approach. Such an approach should include application of internal and international pressure, reduction of the risk of

child recruitment, implementation of demobilization and rehabilitation programming, and prosecution of those who recruit and deploy child soldiers. 🌐

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*** This article was drafted in anticipation of the war in Iraq and does not take into account the recent events in the region.*



the Inter-American Court every year. It exemplifies the extent to which human rights abuses occur in the Americas and evidences the potential for the inter-American system to play a definitive role in removing the shield of impunity for those who plan and carry out such abuses.

A decision in favor of Guatemala would set a precedent that limits the extent to which the Inter-American Court can exercise its jurisdiction to evaluate the efficacy of domestic systems of justice in addressing violations of fundamental human rights.

Indeed, the convictions of one of the individuals suspected of carrying out Myrna's assassination and one of the three accused of planning the crime were important triumphs in Helen Mack's endeavor to seek justice on her sister's behalf. In light of such achievements, the Court could choose to construe strictly the requirement of exhausting domestic remedies and refuse to find the state in violation of the Convention where it had made progress in the pursuit of justice.

If the Inter-American Court decides the case in favor of the petitioners, the decision would add force to the existing jurisprudence that recognizes the Court's jurisdiction over

cases pending in domestic fora when such domestic proceedings have been unreasonably delayed or ineffectively prosecuted. Specifically, this decision would establish the precedent that although prosecution and conviction of some state actors responsible for planning or executing human rights violations are important steps toward fulfilling a state's international legal duties, they are insufficient when others who shared responsibility for such violations continue to enjoy impunity. Finally, such a decision would underscore states' institutional responsibility for state actors who are involved, at all levels, in planning or carrying out human rights violations. 🌐

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